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Supreme Court, U.S.
FILED
JAN 14 1994
OFFICE OF THE CLERK

No. 93-793

In the
Supreme Court of the United States

OCTOBER TERM, 1993

ELEANOR BENT,
Petitioner,

v.

MASSACHUSETTS GENERAL HOSPITAL, ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT.

BRIEF IN OPPOSITION OF RESPONDENTS, MASSACHUSETTS GENERAL HOSPITAL AND CORNELIUS GRANAI, M.D.

FRANK E. REARDON
HASSAN & REARDON, P.C.
535 Boylston Street
Boston, Massachusetts 02116
(617) 859-3600

BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS

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QUESTION PRESENTED

Whether the Petitioner has failed to demonstrate that the decision of the United States Court of Appeals for the First Circuit, in affirming the United States District Court of Massachusetts order of dismissal of the Petitioner's complaint for lack of subject matter jurisdiction raises a special and important reason for the United States Supreme Court to exercise certiorari review of the decision below?

PARTIES TO THE PROCEEDINGS BELOW

The parties in the United States Court of Appeals for the First Circuit were the *pro se* plaintiff, Eleanor Bent, and the defendants, Massachusetts General Hospital,[1] Lahey Clinic Foundation, Inc., South Shore Hospital, Inc., Falmouth Hospital, Inc., Cornelius Granai, M.D., Burton Mandel, M.D., and Alan Cordts, M.D.

[1] Although some of the pleadings filed by the *pro se* plaintiff listed a defendant of the name "Massachusetts General Hospital," the correct name of the corporate entity is The General Hospital Corporation d/b/a Massachusetts General Hospital. That entity has no subsidiaries and is a wholly-owned subsidiary of The Massachusetts General Hospital Corporation.

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OPINIONS AND JUDGMENTS BELOW

The unpublished judgments of the United States District Court and the United States Court of Appeals for the First Circuit are set forth accurately, except for various editorial comments, by the Petitioner as Exhibits E and A, respectively, to her Petition for Writ of Certiorari. The other decisions reproduced as Appendices to the Petitioner's petition for Writ of Certiorari were not rendered in this federal action and therefore should not be reviewed by this Court.

GROUNDS FOR THIS COURT'S JURISDICTION

The Petitioner seeks to invoke this Court's jurisdiction by Writ of Certiorari pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend. 14, § 1

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 1331

> The district courts shall have original jurisdiction of all actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1332(a)

The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum of $50,000, exclusive of interest and costs, and is between —

(1) citizens of different states;

(2) citizens of a State and citizens or subjects of a foreign state;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

For the purposes of this section, section 1335, and section 1441, an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.

42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by The Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress.

Fed. R. Civ. P. § 8(a)

> A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or thirdparty claim, shall contain (1) a short and plain statement of grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

STATEMENT OF THE CASE

The Petitioner, Eleanor Bent ("Ms. Bent"), a Massachusetts resident, filed a lawsuit in the United States District Court of Massachusetts on November 2, 1992 against the Respondents, Massachusetts General Hospital of Boston, Massachusetts, a private charitable institution, and Cornelius Granai, M.D., a gynecologist who is a former member of the Massachusetts General Hospital Medical Staff. At various other times in the fall and winter of 1992, Ms. Bent filed other complaints against the Lahey Clinic Foundation, Inc., South Shore Hospital, Inc., Falmouth Hospital, Inc., Alan Cordts, M.D. and Burton Mandel, M.D.[2] All of the medical institutions are Massachusetts corporations.

Ms. Bent alleged in her complaints that she received medical treatment from Dr. Granai and other health care professionals at Massachusetts General Hospital, and from other physicians

[2] The United States District Court of Massachusetts consolidated all of the complaints filed by the Petitioner into one civil action.

at other hospitals, in January and February of 1989. Ms. Bent's complaint was utterly devoid of any statement regarding the basis for federal court jurisdiction in this action. The only mention of federal law in Ms. Bent's complaint were the vague references that Dr. Granai "violated a federal statute that protects [her] constitutional right to life," and "[h]ow can federal statutes protecting my constitution [*sic*] right to life . . . be broken?" Nowhere in her complaint, however, did Ms. Bent identify which federal statutes she claimed had been violated, or how, and by whom, she believed they had been violated.

On November 18, 1992, the Massachusetts General Hospital filed a Motion for a More Definite Statement on the grounds that (1) it was not clear from her complaint whether Ms. Bent was intending Dr. Granai to be a defendant in this action, and (2) Ms. Bent did not specify which federal statutory and/or constitutional provisions she was alleging had been violated or how they had been violated. The District Court did not act on Massachusetts General Hospital's motion, but soon thereafter scheduled a status conference for all of the parties. On February 22, 1993, after the status conference, the District Court (Tauro, C.J.) issued a written order dismissing Ms. Bent's action for lack of subject matter jurisdiction.

Ms. Bent filed a notice of appeal to the United States Court of Appeals for the First Circuit on March 8, 1993. Substantive briefs were filed thereafter by all parties. On July 20, 1993, by written memorandum, the United States Court of Appeals for the First Circuit affirmed the decision of the District Court.

In November 1993, Ms. Bent filed a Petition for Writ of Certiorari in the United States Supreme Court. Counsel for the Respondents, Massachusetts General Hospital and Dr. Cornelius Granai received a copy of the Petition on November 16, 1993. The Court subsequently enlarged until January 14, 1994 the period of time for filing oppositions to Ms. Bent's Petition.

ARGUMENT

I. The Court Should Deny Ms. Bent's Petition Because She Has Failed to Demonstrate That There Are Special and Important Reasons for Exercising the Court's Discretionary Review.

The Court should deny Ms. Bent's Petition for Writ of Certiorari because she has failed to demonstrate that there are special and important reasons for exercising the Court's discretionary review. The Supreme Court's certiorari decisions under 28 U.S.C. 1254, unlike appeals, are wholly within the Court's discretion, and will only be granted when there are special and important reasons therefor. *Durham* v. *United States*, 401 U.S. 481, 483 (1971); Supreme Court Rule 10. The Court has consistently stated that it will exercise this discretionary power only where there is a great matter of public interest in the resolution of the issue decided below. See, e.g., *Forsyth* v. *Hammond*, 166 U.S. 506, 514-515 (1897) (the Court's power "will be sparingly exercised, and only when the circumstances of the case satisfy us that the importance of the question involved, the necessity of avoiding conflict between two or more Courts of Appeal, . . . or some matter affecting the interests of this nation in its internal or external relations, demands such exercise"); *Layne & Bowler Corp.* v. *Western Well Works, Inc.*, 261 U.S. 387, 392-393 (1923) (per Taft, C.J.) ("it is very important that we be consistent in not granting this Writ of Certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal"). Considerations favoring certiorari review of a federal court of appeals decision include when the decision conflicts with the decision of another federal court of appeals, or the Court, on the same matter; decides a federal

question in a way in conflict with a state court of last resort; departs greatly from the accepted and usual course of judicial proceedings; or decides an important federal question which has not been, but should be, settled by the Court. Supreme Court Rule 10.

In her Petition for Writ of Certiorari, Ms. Bent fails to assert that the Court of Appeals has decided an issue of federal law in an manner in conflict with that of a state court of last resort, another federal court of appeal, or by the Court, or which has not been, but should be, settled by the Court, or has departed greatly from the accepted and usual course of judicial proceedings. For this reason alone, the Court should deny Ms. Bent's Petition for Writ of Certiorari. As there exist no "special and important reasons" for exercising the Court's discretionary jurisdiction under 28 U.S.C. § 1254(1), the Court should deny Ms. Bent's Petition for Writ of Certiorari.

II. The Court Should Deny Ms. Bent's Petition Because the Court of Appeals Correctly Determined That Subject Matter Jurisdiction Is Lacking In This Case.

The Court should deny Ms. Bent's Petition for Writ of Certiorari, because the Court of Appeals correctly determined that subject matter jurisdiction is lacking in this case. "United States District Courts are courts of limited jurisdiction. Creatures of statute, they have only such jurisdiction as the statutes expressly confer, and this jurisdiction must always affirmatively appear." *LeMieux Brothers, Inc.* v. *Tremont Lumber Co.*, 140 F.2d 387, 389 (5th Cir. 1944). 5 Wright and Miller, *Federal Practice and Procedure*, 1206. This policy is reflected in the requirement of Fed. R. Civ. P. 8(a)(1) which mandates that a complaint affirmatively state "a short and plain statement of the grounds upon which this court's jurisdiction depends . . . ." Where there is neither complete diversity of citizenship between the

parties nor federal issues raised which would provide the District Court with subject matter jurisdiction, the Court is without jurisdiction and dismissal of the complaint is appropriate. *Sweeney* v. *Westvaco Co.*, 926 F.2d 29 (1st Cir. 1991), *cert denied*, 112 S.Ct. 274 (1991).

In her complaint, Ms. Bent failed to set forth any basis for subject matter jurisdiction for the District Court over her claims against any of the Defendants in the case. An examination of her complaint, furthermore, reveals that this is a civil suit premised upon a state law cause of action against private individuals and that all of the parties to the action are citizens of the Commonwealth of Massachusetts. There is no basis for subject matter jurisdiction in this case. Thus, the Court of Appeals committed no error in affirming the District Court's dismissal of her complaint.

A. *There is no diversity jurisdiction.*

Federal courts have diversity jurisdiction in civil actions where the matter in controversy exceeds the sum of $50,000 and is between citizens of different states, or between citizens of a state, and foreign states or citizens or subjects thereof, or between citizens of different states and in which foreign states or citizens or subjects thereof are additional parties. 28 U.S.C. § 1332(a). The lack of complete diversity between parties deprives federal courts of jurisdiction over the lawsuit. *Owen Equipment* v. *Kroger*, 437 U.S. 365, 373 (1978); *Sweeney* v. *Westvaco Co.*, 926 F.2d 29, 41 (1st Cir. 1991), *cert denied*, 112 S.Ct. 274 (1991).

In the present case, the complaint is devoid of any reference to diversity jurisdiction. In any event, even from the face of the complaint, it is apparent that complete diversity is lacking, as both Ms. Bent and all of the defendants are citizens of Massachusetts. Thus, even if Ms. Bent had alleged the existence of

diversity jurisdiction it is clear that such jurisdiction does not exist in this case.

B. *There is no federal question jurisdiction.*

Federal courts also may have subject matter jurisdiction in "civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. "In the absence of diversity of citizenship, it is essential to jurisdiction that a substantial federal question be presented." *Hagans* v. *Levine*, 415 U.S. 528, 536-537 (1974) (emphasis added). Moreover, when federal jurisdiction is based upon the existence of a federal question, the complaint must refer to the particular federal statute under which the claim allegedly arises and must set forth facts which show that the claim does in fact arise under federal law. *See, e.g., Reid* v. *Hughes*, 578 F.2d 634, 637 (5th Cir. 1978) (general allegation of a federal question is insufficient if it is not supported by matters constituting the claim for relief sought); *Polhemus* v. *American Medical Ass'n*, 145 F.2d 357, 359 (10th Cir. 1944) (complaint must present a genuine and substantial federal question, and court may decide as to legal sufficiency of the facts alleged to support the claim).

In the present case, Ms. Bent's complaint was utterly devoid of any statement regarding the basis for federal court jurisdiction in this action. Nowhere in her complaint did Ms. Bent identify which federal statutes she claimed had been violated, or how they had been violated. Ms. Bent's conclusory allegations that Massachusetts General Hospital and Dr. Granai violated her constitutionally guaranteed right to life and pursuit of happiness, however, do not establish a substantial federal question which would give rise to subject matter jurisdiction in the federal district court. Because Ms. Bent failed to allege with sufficient clarity a federal statute which would vest the

district court with subject matter jurisdiction and allege facts that would support a substantial claim under such a statute, federal court subject matter jurisdiction in this case may not be based upon federal question jurisdiction.

Interpreting her complaint liberally, one might conclude that Ms. Bent attempted to allege violations of section 1 of the Fourteenth Amendment to the United States Constitution, which states in pertinent part as follows:

> . . . nor shall any state deprive any person of life, liberty or property without due process of laws; nor deny any person within its jurisdiction the equal protection of the laws.

U.S.C. Const. Amend. 14, 1.

Although 42 U.S.C. § 1983 extends liability for deprivations of an individual's Fourteenth Amendment rights to private individuals acting under color of state law, the action must have been compelled or encouraged by the state. *See, e.g., Flagg Bros., Inc.* v. *Brooks*, 436 U.S. 149, 164 (1978); *Blum* v. *Yaretsky*, 457 U.S. 991, 1004 (1982).

In her complaint, Ms. Bent failed to allege that any of the alleged actions of any of the defendants had been compelled or encouraged by state law. Indeed, Ms. Bent could not have alleged in good faith that any of the defendants, including Massachusetts General Hospital and Dr. Granai, had been acting as agents for a state government during their alleged interaction with her. It is undisputed that at all times relevant to Ms. Bent's complaint the defendants were private citizens, and not agents of any state government. Since any claim under the Fourteenth Amendment would obviously fail as a matter of law for lack of state action, Ms. Bent's complaint provides no substantial federal question which would grant the District Court subject matter jurisdiction in this action. As Ms. Bent

has failed to adequately allege, and in good faith cannot demonstrate, that her complaint raises a substantial federal question, the Court of Appeals was correct in affirming the District Court's dismissal of her complaint on the basis of lack of federal question jurisdiction.

CONCLUSION

The First Circuit correctly concluded that the plaintiff's complaint set forth at best a state law tort claim against private individuals with no diversity of citizenship. As the Courts of Appeals' decision was consistent with decisions of this Court and of the other federal courts of appeal with respect to all of the relevant constitutional and statutory provisions, and the plaintiff has failed to demonstrate in her Petition the existence of any constitutional or statutory question of overriding public importance or interest warranting this Court's discretionary review, the defendants, Massachusetts General Hospital and Cornelius Granai, M.D., respectfully request that this Court deny the plaintiff's, Petition for Writ of Certiorari.

Respectfully submitted,

FRANK E. REARDON
HASSAN & REARDON, P.C.
535 Boylston Street
Boston, Massachusetts 02116
(617) 859-3600